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9 Chapter 11 trustee

10 UNITED STATES BANKRUPTCY COURT

11 EASTERN DISTRICT OF CALIFORNIA

12 [Sacramento Division]

13 In re:

14 PAUL SANDNER MOLLER &
15 ROSA MARIA MOLLER,

16 Debtors.

Case No. 09-29936-C-11

Docket Control No. LAZ-1

Continued Hearing:

Date: November 22, 2010

Time: 2:00 p.m.

Dept: C (Courtroom 35)

Hon. Christopher M. Klein

17 **ORDER ON MOTION FOR
18 RELIEF FROM THE AUTOMATIC STAY**

19 A continued hearing was held on November 22, 2010 at 2:00 p.m. in
20 Department "C" of the United States Bankruptcy Court, Eastern District of California,
21 Sacramento Division, the Honorable Christopher M. Klein presiding, on the Motion for
22 Relief From the Automatic Stay (the "Motion"), filed on behalf of U.S. Bank National
23 Association, N.D. ("US Bank"). Appearances were noted on the record.

24 Based upon the Motion, the supporting declaration, the record in this bankruptcy
25 case, and upon the representations of counsel; US Bank, the Debtors, and the chapter
26 11 trustee having reached a stipulation to resolve the Motion, and good cause
27 appearing;

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RECEIVED

November 23, 2010

CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
0003094728

1 **IT IS HEREBY ORDERED** as follows:

2 1. The Stipulation For Adequate Protection and For Resolution of Motion for
3 Relief From the Automatic Stay ("Stipulation") between Paul and Rosa Moller, Jon
4 Tesar, as trustee, and US Bank, a copy of which is attached hereto as Exhibit "A," is
5 approved.

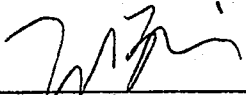
6 2. In the event of an uncured default in payment as described in paragraph 5
7 of the Stipulation, US Bank shall be entitled to obtain a hearing on relief from the
8 automatic stay on as little as ten (10) days' notice to parties entitled to notice of same
9 under applicable rules.

10 3. Notwithstanding the rights of creditors under the Stipulation, this order
11 shall not prejudice any creditor's rights to otherwise seek relief from the automatic stay
12 regarding the property subject of the Stipulation and shall not prejudice any interested
13 party's rights to oppose such relief.

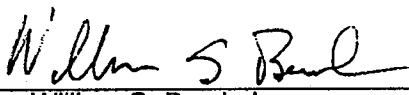
14 4. Except to the extent stated above, the Motion is denied without prejudice.

15 APPROVED:

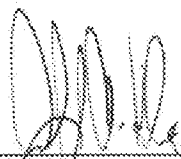
16 LAW OFFICES OF LES ZIEVE

17
18 
19 By: Les Zieve
20 Attorneys for US Bank

BERNHEIM, GUTIERREZ & McREADY

21
22 
23 By: William S. Bernheim
24 Attorneys for the Debtors

25 Dated: November 23, 2010

26
27
28 
United States Bankruptcy Judge

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16 Debtors.

17 Case No. 09-29936-C-11
 18 Docket Control No. LAZ-1

19 Continued Hearing:

20 Date: November 22, 2010

21 Time: 2:00 p.m.

22 Dept: C (Courtroom 35)

23 Hon. Christopher M. Klein

24 **STIPULATION FOR ADEQUATE PROTECTION AND RESOLUTION**
 25 **OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

26 Through counsel, U.S. Bank National Association, N.D. ("US Bank"), Paul Moller
 27 and Rosa Moller (the "Debtors"), and Jon Tesar (the "Trustee"), as trustee of the
 28 above-captioned bankruptcy estate of the Debtors, agree as follows:

I. RECITALS

A. On May 18, 2009 (the "Petition Date"), the Debtors filed a joint voluntary
 petition for relief under chapter 11 of the Bankruptcy Code.

B. By way of an order entered on March 29, 2010, the Trustee's
 appointment as chapter 11 trustee in the Debtors' case was approved. The Trustee
 continues to serve in that capacity.

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1 C. Among the assets of the Debtors' bankruptcy estate is the real property
2 commonly known as 9350 Curry Road, Dixon, California (the "Property"). As stated in
3 the Debtors' bankruptcy schedules, there are four deeds of trust against the Property, in
4 favor of the following parties and in the following order of priority:

- 5 (1) Morgan Stanley;
6 (2) US Bank;
7 (3) Bay Area Financial Corp. ("BAFC");
8 (4) Victoria Schlechter.

9 D. As of the Petition Date and continuing to date, the Debtors had not repaid
10 the monetary obligations owed to the parties identified in the previous paragraph.

11 E. As of the Petition Date and continuing to date, the Debtors have used the
12 Property as their residence. The Trustee is investigating whether the Property has value
13 that can be recovered by the bankruptcy estate.

14 F. On November 2, 2009, US Bank filed its Motion for Relief From the
15 Automatic Stay, bearing Docket Control No. LAZ-1 (the "Motion"). By way of the
16 Motion, US Bank seeks relief from the automatic stay to proceed against the Property
17 under the terms of its deed of trust and applicable nonbankruptcy law.

18 G. The parties have reached terms under which BAFC shall receive periodic
19 payments to protect its interest, and which shall govern the parties' rights should a
20 default in such payments occur.

21 II. AGREEMENT

22 1. Starting on June 15, 2010 and continuing no later than the fifteenth day
23 of each calendar month following, the Debtors shall pay to the Trustee the sum of no
24 less than \$2,256.54. The Debtors represent that such payments shall be derived from
25 their retirement income.

26 2. Starting on the day after entry of the order approving this Stipulation, and
27 continuing no later than ten (10) days following the beginning of each calendar month
28 thereafter, the Trustee shall make monthly adequate protection payments to Morgan

1 Stanley in the amount of \$2,256.54 and US Bank in the amount of \$1,504.48. The
2 Trustee shall mail payments to Morgan Stanley at the following address, in connection
3 with loan no. *****0828: Morgan Stanley Credit Corp., 4708 Mercantile Drive, Fort
4 Worth, TX 76137. The Trustee shall mail payments to US Bank at the following
5 address, in connection with loan no. *****07388991: U.S. Bank, N.A., P.O. Box
6 5229, Cincinnati, OH 45201. Funds for these payments shall be derived from the
7 funds described in paragraph 1 above and the balance from unencumbered funds of the
8 bankruptcy estate in the Trustee's possession and control. Should the Debtors fail
9 timely to make the full amount of any monthly payment described in paragraph 1
10 above, the Trustee shall not be obligated to make the payments to Morgan Stanley or
11 US Bank described in this paragraph.

12 3. Starting on the day after entry of the order approving this Stipulation, and
13 continuing no later than ten (10) days following the beginning of each calendar month
14 thereafter, the Debtors shall make monthly adequate protection payments directly to
15 BAFC in the amount of \$2,292.60, so as to be received by BAFC on or before the
16 tenth (10th) day of each month. The Debtors represent that such payments to BAFC
17 shall be derived from funds to be advanced by a family member. The Debtors agree
18 and represent that such funds shall not constitute a post-petition loan to the Debtors'
19 bankruptcy estate and that the estate shall not be liable for repayment of any such
20 funds.

21 4. The Trustee shall provide to BAFC, through counsel identified below,
22 written evidence of each payment made to Morgan Stanley and US Bank, no later than
23 ten (10) days following the beginning of each month of such payment.

24 5. In the event of non-payment of any adequate protection payment
25 described herein to BAFC or US Bank by the tenth (10th) day of any month, US Bank
26 shall transmit a Notice of Default to the Debtors by fax at _____ and to the
27 Trustee by e-mail at jontesar@msn.com, and by fax to their respective counsel
28 identified below. In the event that any late payments are not cured within ten (10) days

1 of service of the Notice of Default, the Bankruptcy Court shall be authorized to grant full
2 and immediate relief from the automatic stay in favor of US Bank, after hearing on
3 notice to parties entitled to same by applicable rules, on as little as ten (10) days'
4 notice. The order approving this Stipulation shall provide for such shortened notice.

5 6. This Stipulation shall be subject to the approval of the Bankruptcy Court.

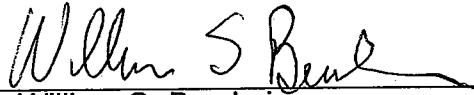
6 Dated: _____

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13 Attorneys for US Bank

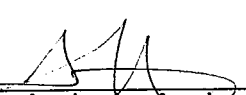
14 Dated: Nov 22, 2010

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22 Dated: 11.22.10

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Attorneys for the Trustee

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4 notice. The order approving this Stipulation shall provide for such shortened notice.

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6 Dated: 11/22/10

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